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SUBJECT: ISTANBUL ADMINISTRATIVE COURT BLOCKS "ALTERNATIVE ARMENIAN CONFERENCE"; ORGANIZERS SEEK TO BYPASS DECISION BY USING A THIRD VENUE

REF: A. ANKARA 4951

1B. ANKARA 3032

This message was coordinated with Embassy Ankara.

11. (U) This is an action message, see para 13.

12. (SBU) Summary: In a controversial decision unveiled just hours before the start of the "Alternative Armenian Conference," at which independent-minded speakers planned to challenge Turkish orthodoxy about the massacre of Armenians in 1915, an Istanbul court on September 22 handed down an injunction blocking the event. The ruling marked the second time the event has been cancelled. Most legal experts were highly critical of the decision and both PM Erdogan and FM Gul strongly condemned it. The European Commission also reacted vigorously, criticizing the decision and terming its late delivery a "provocation." Embassy has expressed appreciation for the GOT's reaction and told the MFA the conference needs to get back on track. At mid-day on September 23, organizers indicated they hope to do so by holding the conference at Bilgi University on September 24, seizing on Justice Minister Cicek's suggestion that the court decision only applies to Bosphorus and Sabanci Universities, as the plaintiffs omitted Bilgi in their initial filing. Suggested press guidance is in para 13. End Summary.

13. (SBU) Organizers at Bosphorus and Sabanci universities had originally planned to hold the "Alternative Armenian Conference" in May. But they were forced to cancel at the last minute after Justice Minister Cicek angrily denounced them on the floor of Parliament as "traitors" and asserted that the conference was a "stab in the back" (reftel B). At that time, neither Erdogan nor Gul spoke out, though Speaker of Parliament Arinc did criticize Cicek.

14. (SBU) Stung by negative international reaction, however, the government subsequently encouraged organizers to re-schedule, with Gul even accepting in principle an invitation to open the conference on September 23 (though the UNGA ultimately precluded his attendance) (Ref A). Opponents in Turkey's nationalist Union of Jurists quietly filed suit to block the conference, and won provisional approval of their suit in a September 19 decision by Istanbul's 4th Administrative Court. Lawyers for the plaintiffs did not deliver the decision to the Governor's office until late on September 22, however, and by the time the decision was relayed to the universities shortly thereafter, there was no time left to appeal. The court's decision, adopted by a split 2-1 vote, is not a final one, but is preliminary, pending submission of material to the court by the defendants.

15. (SBU) The material requested by the court includes information on the "administrative process" used to organize the conference,

whether any administrative authority was informed about the conference, the criteria used in deciding on who would speak, whether the meeting was open to "anyone who would like to express their views," the criteria "that have been considered in case the meeting has been organized for limited representation," and how the cost of transportation and accommodation for the speakers would be financed. The court gave the defendants 30 days to produce the required information. Court head Saadettin Yaman and member Hami Ali Kandil voted in favor of the decision, while judge Fethi Sayin opposed it, arguing that the "meeting in question is not an administrative action that can be the subject of an administrative trial."

¶6. (SBU) In a remarkable reversal of its statements in May, the GOT reaction to the court decision was swift and negative. Erdogan, who earlier this week declined to directly address the prosecution of Orhan Pamuk, was unusually forthright in decrying the ruling. He stated that he could not approve such a decision at a time when "we want a more democratic and freer Turkey," adding that, "I cannot reconcile the blocking of a platform for ideas, which has yet to take place, with the concepts of democracy, freedom, and modernity."

¶7. (SBU) Gul added that "there are few countries that do as much harm to themselves as we do." He ascribed the decision to the "last attempts of certain circles that try to block Turkey's road on her way to EU negotiations on October 3," and said he would not be surprised to see more such last-gasp efforts in coming weeks. Both the PM and FM's statements were carried widely on television.
(Comment: This is the first time we have seen high-ranking GOT officials make such statements in conjunction with freedom of speech.
End Comment). Opposition CHP officials also criticized the decision. Only the opposition True Path Party (DYP) and several fringe parties expressed support for the decision. In a strong statement issued in Brussels, the European Commission condemned the decision, describing its late delivery as a "provocation," but taking note of Erdogan's statement.

¶8. (SBU) Most legal pundits and observers were also quick to criticize the decision, agreeing with Sayin that the court had overstepped its bounds in viewing the meeting as an administrative action. Ibrahim Kabaoglu, an expert in constitutional law from Marmara University, told the press that no judge has the legal authority to postpone a scholarly meeting and that the decision was a "first." Ismet Berkun, editor of the liberal daily "Radikal," who had characterized Bosphorus's earlier decision to postpone the conference as a "turning point in terms of academic autonomy and freedom in Turkey," was equally unsparing regarding the court's action. He argued in his September 23 column that if in the Turkish Republic "respected" universities say that a conference is a "scholarly" one, "that conference is scholarly." Courts, he said, have no authority to judge the issue one way or another. "We are witness," he concluded, "to a court overstepping the bounds of its

authority."

¶9. (SBU) Organizers met for three hours on the evening of September 22 and again on the morning of September 23 to review their legal options, which they pledged in a September 22 statement to defend fully. Seizing on an opening made by Justice Minister Cicek (whose earlier criticism helped torpedo the conference in May), they announced mid-afternoon September 23 that they would both appeal the ruling and seek to hold the conference at Bilgi University, which was not cited in the plaintiffs' application to the court, or at another venue. (Cicek indicated that the Administrative Court's decision covers Bosphorus and Sabanci Universities, but does not apply to any school.)

¶10. (U) Yet to be seen are the plaintiffs' and court's reaction. Earlier on September 22, Kemal Kerincsiz, a member of the Union of Jurists (which brought the case) and former president of the Nationalist Lawyers' Association predicted that the decision was the final nail in the conference's coffin, but warned that "if you insist and decide for the third time to hold this conference, the Turkish nation will not tolerate it."

¶11. (SBU) Comment: As Gul observed, Turkey has a knack for drawing attention to its democratic deficiencies at especially inopportune moments. With the opening of EU negotiations less than two weeks off, two Armenian genocide-related resolutions voted out of committee on Capitol Hill, and the ongoing investigation of novelist Orhan Pamuk for having dared to claim that there is no freedom in Turkey to discuss controversial issues like the massacre of Armenians (reftel C), now was a time to highlight Turkey's ability to openly debate controversial issues, rather than the reverse. Embassy Ankara has already made the point with Turkish officials that the conference needs to get back on track. The originators of this latest fiasco came not from within the GOT but from outside elements that would be happy to see the EU process fail and that also do not mind embarrassing the government. The GOT has rallied strongly and the combination of Erdogan and Gul's strong statements and Cicek's opening may enable organizers to find a way around the court ruling.

¶12. Comment continued: It is encouraging that the conference may still take place at an alternative site. But even so, speakers would be under intense pressure. As reported reftel B, the EU-related legal reforms have made no meaningful impact on freedom of speech. We will be encouraging the government to work harder on this. It remains to be seen whether the speakers are able to express their views, and whether doing so lands them in court, as happened to Pamuk. End Comment.

¶13. (SBU) Action request: Mission Turkey recommends that Department adopt press guidance expressing disappointment with the decision and recognizing the prompt and positive reaction of the government. Suggested text follows:

Q: Any comment on the decision by a Turkish court to prevent an academic conference on the Armenian issue that was scheduled to begin

today in Istanbul?

-- We have said many times that the circumstances surrounding the mass deaths of Armenians at the end of the Ottoman Empire is a question best left for historians to debate.

-- We have long supported Turkey's democratization process as part of its drive to secure membership in the European Union.

-- Prime Minister Erdogan said yesterday that the court's decision is inconsistent with that process. We agree with the Prime Minister's observation.

JONES